

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KELVIN ANDRE SPOTTS,

Plaintiff,

v.

UNITED STATES OF AMERICA, et. al.,

Defendants.

CIVIL NO. 3:12-CV-583

(Judge Kosik)

MEMORANDUM

Before the court are Plaintiff's Objections to the Report and Recommendation of Magistrate Judge Martin C. Carlson (Doc. 185) filed on May 28, 2014, recommending that Plaintiff's Motion for Summary Judgment (Doc. 183) be denied. For the reasons which follow, we will adopt the Report and Recommendation of the Magistrate Judge.

BACKGROUND

Kelvin Andre Spotts, an inmate formerly confined at the United States Penitentiary-Canaan, Pennsylvania¹, filed the instant action pursuant to Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). He also has filed a Federal Tort Claims Act claim². The action is based on the alleged negligence of the prison in serving chicken fajitas that contained salmonella bacteria. Following an extensive procedural history, Plaintiff filed a Motion for Summary Judgment (Doc. 183) on the Federal Tort Claims Act claim. The United States filed a Response (Doc. 184), wherein they challenged the Plaintiff's medical assertions.

¹Plaintiff is now confined at the United States Penitentiary-Beaumont, Beaumont, Texas.

²The action was brought by Plaintiff and three other inmates. We note that the action was settled and dismissed as to the other Plaintiffs (Doc. 104). Plaintiff, Spotts, is the only Plaintiff remaining in this case.

On May 28, 2014, the Magistrate Judge filed a Report and Recommendation (Doc. 185), wherein he recommended that the Motion for Summary Judgment be denied. Plaintiff filed Objections to the Report and Recommendation (Doc. 191), a Memorandum in Support of the Motion for Summary Judgment (Doc. 192), and a Statement of Uncontroverted Facts (Doc. 193).

DISCUSSION

When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

In the Report and Recommendation, after pointing out that Plaintiff failed to file a brief in support of his Motion in contravention of Local Rule 7.5, the Magistrate Judge went on to discuss the merits of Plaintiff's Motion. Specifically, the Magistrate Judge found that based on the record before the court, there is a factual dispute regarding whether Plaintiff suffered from food poisoning and the surrounding medical documentation in this case. Thus, he recommended that the Motion for Summary Judgment be denied.

In his Objections to the Report and Recommendation, Plaintiff initially objects to the Magistrate Judge's discussion regarding Plaintiff's failure to file a brief in support of the Motion. However, after referencing the Local Rule, the Magistrate

Judge went on to address the merits of Plaintiff's Motion. Thus, Plaintiff was not prejudiced by the Magistrate Judge's discussion regarding the failure to file a brief.

Plaintiff next objects to the Magistrate Judge's finding that issues of material fact exist in this case. Along with his Objections, the Plaintiff filed a Memorandum in Support of his Motion for Summary Judgment (Doc. 192) and a Statement of Uncontroverted Facts (Doc. 193). Attached to the Statement of Uncontroverted Facts were documents relating to Plaintiff's administrative claims filed as a result of the June 2011 food poisoning incident. Plaintiff also objects to the time frame used by the Magistrate Judge in considering his Motion.

As the Magistrate Judge points out, the position of the United States, as borne out by the record, is that Plaintiff was not afflicted with food poisoning (See, Doc. 153, Exhibits). While Plaintiff submits documentation and argues that he has established that he suffered from food poisoning, and that a limited time frame should be applied, we agree with the Magistrate Judge that genuine issues of material fact still exist in this case. Accordingly, we will adopt the Report and Recommendation of the Magistrate Judge, and we will deny Plaintiff's Motion for Summary Judgment. An appropriate Order follows.

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ORDER

AND NOW, THIS 7th DAY OF AUGUST, 2014, IT IS HEREBY
ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson
filed on May 28, 2014 (Doc. 185) is **ADOPTED**;

(2) The Plaintiff's Motion for Summary Judgment (Doc. 183) is **DENIED**; and

(3) The above-captioned action is **REMANDED** to the Magistrate Judge for
further proceedings.


Edwin M. Kosik
United States District Judge